

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Implementation of the	)	CC Docket No. 96-115
Telecommunications Act of 1996:	)	
	)	
Telecommunications Carriers' Use of	)	
Customer Proprietary Network	)	
Information and other Customer	)	
Information;	)	
	)	RM-11277
Petition for Rulemaking to Enhance	)	
Security and Authentication Standards	)	
for Access to Customer Proprietary	)	
Network Information	)	

**COMMENTS OF THE  
INDEPENDENT CARRIER GROUP**

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## SUMMARY

The Independent Carrier Group (“ICG”) respectfully requests that, should the Commission determine that additional CPNI mechanisms are necessary for small telecommunications carriers, the Commission adopt the ICG’s proposed rules provided for herein. The Independent Carrier Group (“ICG”) has developed its proposal based upon the current FCC Customer Proprietary Network Information (“CPNI”) rules and addresses the specific focus of the *NPRM*-- the unauthorized disclosure of CPNI to data brokers. The ICG proposal: (1) relies upon the current CPNI rules for the existing scope of end user authorization of his or her CPNI; (2) requires contact with the end user when an unauthorized third party seeks the end user’s CPNI; (3) minimizes customer confusion regarding disclosure of CPNI; and (4) minimizes costs of compliance and implementation for small telecommunications carriers when implementing any new requirements.

The ICG respectfully submits that should additional Commission action be required, the combination of these objectives addresses the need for further CPNI obligations while ensuring that the end user retains control over his or her CPNI. That result, in turn, advances the public interest.

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The Independent Carrier Group ("ICG")<sup>1</sup> hereby submits these comments in response to the *Notice of Proposed Rulemaking* issued in the above captioned matter by the Federal Communications Commission (the "Commission" or "FCC").<sup>2</sup> Consistent with the Commission's efforts in this proceeding regarding small telecommunications carriers,<sup>3</sup> the ICG has developed a proposal that builds upon

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<sup>1</sup> The ICG is composed of rural and independent carriers and/or their affiliates. *See* Attachment A.

<sup>2</sup> *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Petition for Rulemaking to Enhance Security and Authentication Standards for Access to Customer Proprietary Network Information: Notice of Proposed Rulemaking*, CC Docket No. 96-115, RM-11277, FCC 06-10 (rel. Feb. 14, 2006) ("*NPRM*"). The *NPRM* was published in the Federal Register on March 15, 2006, 71 Fed. Reg. 13317, and the Commission issued a Public Notice on March 16, 2006, confirming the pleading cycle for this proceeding. *See Public Notice*, DA 06-600 (Mar. 21, 2006).

<sup>3</sup> The Commission indicated several times in the *NPRM* its sensitivity to the cost impact that certain measures may cause. *See, e.g., NPRM* at ¶¶12, 20, 23. The Commission has also indicated that it seeks comments on how its proposals can be tailored to entities, like the ICG members, that are small businesses. *See NPRM* at ¶19, Appendix B at ¶80.

the current FCC Customer Proprietary Network Information (“CPNI”) rules and addresses the specific focus of the *NPRM*-- the unauthorized disclosure of CPNI to data brokers. Accordingly, for the reasons stated herein, the ICG respectfully requests that, should the Commission determine that additional CPNI mechanisms are necessary for small telecommunications carriers, the FCC adopt the ICG’s proposed rule, herein.

By placing the control over CPNI within the hands of the end user as the FCC’s current CPNI rules provide, the ICG proposal achieves the following objectives: (1) relies upon the current CPNI rules for the existing scope of end user authorization of his or her CPNI; (2) requires contact with the end user when an unauthorized third party seeks the end user’s CPNI; (3) minimizes customer confusion regarding disclosure of CPNI; and (4) minimizes costs of compliance and implementation for small telecommunications carriers when implementing any new requirements. The ICG respectfully submits that the combination of these objectives addresses the need for further CPNI obligations while ensuring that the end user retains control over his or her CPNI. That result, in turn, advances the public interest.

**I. SHOULD THE FCC DETERMINE THAT UNAUTHORIZED DISCLOSURE OF CPNI TO DATA BROKERS REQUIRES ADDITIONAL ACTION, THE ICG PROPOSAL SHOULD BE ADOPTED FOR SMALL TELECOMMUNICATIONS CARRIERS**

The ICG members agree with the overall concerns that were identified in the EPIC Petition and the *NPRM*, and support efforts to prevent unauthorized

disclosures of CPNI.<sup>4</sup> Since the issue arises in the context of data brokers, the Commission's efforts in this proceeding should be targeted to such entities. Based on the ICG members' experience, however, it is uncertain whether such occurrences require additional CPNI compliance efforts, as suggested in the *NPRM*, rather than aggressive oversight of "data brokers" by other local or Federal agencies. If, however, the Commission concludes that unauthorized disclosure of CPNI to data brokers requires additional Commission action, then the ICG submits respectfully that its proposal be adopted for small telecommunications carriers.

**A. The Underlying Objectives of the ICG Proposal Advance the Public Interest**

Should general action by the FCC be required, the ICG proposes a rule amendment that can be adopted in this proceeding. The proposed rule amendment is based upon an indisputable premise that is entirely consistent with the FCC's current CPNI rules: by placing *additional* control of CPNI within the hands of the end-user, unauthorized disclosure can be reduced significantly without creating customer confusion and without imposing unnecessary costs on small telecommunications carriers that obtain CPNI from the end-user through their carrier relationship. Each element of this premise, in turn, advances the public interest.

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<sup>4</sup> See, *i.e.*, *NPRM* at ¶¶ 9-11, 15. As indicated in the *NPRM*, the Commission's inquiry arises out of a petition filed by the Electronic Privacy Information Center ("EPIC") in which EPIC described the existence of numerous websites that advertise the sale of personal telephone records. The entities that operate these websites have been referred to as "data brokers." The records, which EPIC notes are frequently cell phone records, include specific information about subscriber calling patterns, such as call logs and the duration of such calls. The websites also purportedly offer access to landline, voice over Internet protocol ("VoIP") records, and non-published phone number records. The Commission granted EPIC's request to initiate a rulemaking to determine the need for more stringent requirements related to CPNI access and disclosure.

**1. The end user already controls his or her disclosure of CPNI and the extent of that control should be expanded**

The Commission has already established rules and regulations whereby end users are provided the method by which they can authorize the disclosure of their CPNI by the telecommunications carriers that serve them. There appears to be no question in this proceeding that these procedures require change. Thus, should FCC action be required to address the current “data broker” issue, the public interest would be served by building upon the policies that underlie the existing CPNI rules since they have already been found to be in the public interest.

With this as a starting place, under the ICG proposal (*see* Section I.B, *infra*), if a third-party’s request for CPNI is already consistent with the customer’s CPNI-use authorization, the carrier may disclose the CPNI in accordance with the customer’s prior election. Where the third-party’s request is not consistent with the end-user’s CPNI election, however, then the telecommunications carrier may not disclose *any* CPNI to the third-party *until and unless* a specific authorization provided by such end user is received by it. Thus, it is the customer that is in control over whether to disclose his or her CPNI to third parties/data brokers just as he or she determines the extent to which his or her individual CPNI can be used for marketing purposes.<sup>5</sup>

**2. The end user should be provided the information necessary to ensure an informed decision**

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<sup>5</sup> See, e.g., 47 CFR ‘ 64.2007.

Under the current FCC CPNI rules, there should be no question that the customer has control over the use of his or her individual CPNI.<sup>6</sup> Moreover, a customer who is contacted in response to a request by an unauthorized third party for access to CPNI should not be confused as to what he or she is being asked to do. Likewise, the identity of the requesting third party should not be uncertain. Therefore, common sense dictates that any new proposal addressing the previously unauthorized disclosure to third parties (such as data brokers) should avoid customer confusion. The ICG proposal achieves this result.

The ICG proposal ensures that any required new consumer authorizations are conducted in a manner that provides the end user the baseline information as to what he or she is being asked to decide.<sup>7</sup> Any third party disclosure request made to the end user would require that the end user be told: (a) the name, mailing address, email address, and telephone number of the third-party; (b) the specific CPNI of the end user that the third-party is requesting be disclosed to it; and (c) the purpose that the third-party will make of the CPNI. These data requirements are entirely appropriate. If the request for disclosure from the third party is legitimate, then the third party should be willing and able to provide this information without delay. Moreover, since the third party contact is being made, a record would be developed by the carrier that would allow proper end user follow-up as required. To ensure that the information is available as necessary, the ICG further submits that small

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<sup>6</sup> *See, id.*

<sup>7</sup> The ICG notes that this is consistent with the objectives underlying the Commission's inquiry regarding whether "the notifications carriers provide subscribers regarding the use and disclosure of CPNI are written clearly enough so that customers adequately understand . . ." *NPRM* at &27.

telecommunications carriers would retain records of any third-party requests for one year from the date the telecommunications carrier receives the third party's CPNI request, and that the carrier provide this information upon request to the Commission.

Customer confusion would be avoided by requiring the customer to be contacted only where his or her previous CPNI authorization did not address the new third party request. Thus, end users would be contacted only when necessary, and be provided at that time with information sufficient to enable an informed decision.

**3. Small telecommunications carriers should be provided options that minimize compliance costs**

The Commission has previously established policies that recognize that the public interest is served by accommodating the costs and administrative burdens upon small and rural LECs, and recognizing that the implementation of certain measures are, accordingly, too costly for small carriers, as compared to larger carriers.<sup>8</sup> The FCC asks whether these same types of policies should apply in this proceeding.<sup>9</sup> The ICG respectfully suggests they should.

In manner fully consistent with its existing policies, the Commission should minimize burdens on small and rural carriers which, in the first instance, do not use CPNI for marketing, and adopt only limited measures that are most critical to addressing the unauthorized disclosure of CPNI to data brokers. Rather than

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<sup>8</sup> See, e.g., *Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers: Report and Order and Notice of Proposed Rulemaking*, CG Docket No. 02-386, FCC 05-29, at ¶23, (rel. Feb. 25, 2005).

<sup>9</sup> See *NPRM* at ¶¶19, 80.



create new , potentially burdensome and costly procedures and record retention requirements, the FCC should focus on the specific problem at hand, namely, the release of CPNI to data brokers. This issue, in turn, can be addressed in a simple and straightforward manner – contact the customer and let him or her decide.

Thus, the ICG proposes that any new authorization from the end user can be obtained in one of several ways that enable carriers to implement procedures and processes best suited to their existing capabilities. Any new authorization could be obtained via a written communication to the end-user’s address of record and a response in writing from that end-user to the telecommunications carrier. Alternatively, and at the LEC’s discretion, the LEC would be permitted to initiate a three-party call between the requesting third-party, the telecommunications carrier, and the end-user in order to verify the veracity of the CPNI request. In all events, however, the ICG proposal places the end user in a position of direct, real-time control regarding the use of his or her CPNI without creating unnecessary and costly administrative burdens upon the small telecommunications carrier.

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**B. Section 64.2007(c) as Proposed by the ICG should be Adopted if General FCC Action is Required in this Proceeding**

Consistent with the public policy discussed above, the ICG proposes that the Commission adopt the following rule for small telecommunications carriers should additional CPNI rule requirements be deemed necessary. Accordingly, the ICG proposes the following amendment to 47 CFR 64.2007 as new Sections 64.2007(c) and (d):

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<sup>10</sup> The ICG proposal also contemplates the possibility that a person or entity may “pose” as a customer and request CPNI disclosure while purporting to be the end user. Accordingly, the ICG permits small telecommunications carriers to undertake identity verification procedures. *See proposed* 47 C.F.R. § 64.2007(d) (Section I.B, *supra*).

(c) *CPNI Disclosure to third parties by Small Telecommunications Carriers.* The following requirements apply where a third party contacts a telecommunications carrier that is also a “small business” under applicable Small Business Administration requirements (a “Small Telecommunications Carrier” or “STC”) for customer-specific calling and service information.

- (1) The STC receiving the contact from the third party shall comply with the end-user’s election with respect to the use and disclosure of his or her CPNI to the requesting third party.
- (2) Where the third party’s request is not consistent with the end-user’s CPNI election, the STC shall not disclose *any* CPNI to the third party *until and unless* a specific authorization provided by such end-user is received by the STC.
- (3) Where an end-user’s authorization is required for the disclosure of his or her CPNI to the requesting third party, that authorization can be sent and received in one of following ways. The method to be used shall be determined by the STC based on the circumstances that the STC determines to be the most effective and efficient in ensuring that the end-user retains control over his or her CPNI.
  - (i) A written communication to the end-user’s address of record and a response in writing from that end-user to the STC; or
  - (ii) A three-party call between the end-user, the requesting third party, the STC and the end-user.

Nothing in this section shall preclude the STC from confirming in writing the end user’s decision regarding the disclosure of his or her CPNI to the third party.

- (4) All notifications and/or approvals identified by this section require that the following information be disclosed to the end-user:
  - (i) The name, mailing address, email address and telephone number of the third party;
  - (ii) The specific CPNI of the end-user that the third party is requesting to be disclosed to it; and
  - (iii) The purpose that the third party will make of the CPNI.
- (5) An STC shall retain records of any third party requests identified herein for one year from the date the STC receives the CPNI request from the third party and shall be included in the submission of any CPNI certification to the Commission.

- (6) An STC shall be in a position to provide the records required to be retained pursuant to this section to the Commission upon request.
- (7) Should a claim of unauthorized disclosure of CPNI be made against an STC, that STC shall not be liable for any unauthorized disclosure if it can demonstrate that it has taken reasonable, good-faith efforts to implement procedures that comply with the requirements of this section, including a demonstration that the STC engages in training of its employees regarding these requirements and the Commission's CPNI rules in general.

(d) *CPNI Disclosure to Customers by Small Telecommunications Carriers.* An STC may undertake such procedures consistent with its usual and ordinary practices as necessary to verify the identity of a customer who requests disclosure of CPNI to either that customer or a third-party.

## **II. THE PUBLIC INTEREST WOULD BE SERVED BY ADDRESSING OTHER *NPRM* ISSUES IN A MANNER CONSISTENT WITH THE ICG PROPOSAL**

As demonstrated above, should the Commission determine that action is necessary to address third party data brokers use of CPNI, the ICG proposed rule amendment should be adopted for small telecommunications carriers. For similar reasons, the ICG respectfully suggests that other issues raised in the *NPRM* should likewise be resolved in a manner consistent with the ICG proposal.

### **A. Should carriers inform customers of each instance of CPNI disclosure?**

The Commission's rules already require carriers to record any CPNI disclosure to third parties.<sup>11</sup> Accordingly, the ICG submits that a requirement to notify customers after any release of their CPNI, including "incidents where the carrier has no grounds to suspect that the request is not legitimate,"<sup>12</sup> is

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<sup>11</sup> 47 C.F.R. § 64.2009(c).

<sup>12</sup> See *NPRM* at ¶23.

unnecessary. If consent was already given, then such “secondary” notice could be confusing to the customer. Likewise, if consent is required, the ICG proposal ensures that it is received,<sup>13</sup> and does so in an administratively less burdensome manner than may otherwise be envisioned by the *NPRM* and the EPIC Petition.<sup>14</sup>

**B. Should a “safe harbor” be established for complying carriers?**

The ICG supports proposals to “exempt a carrier from liability or establish a safe harbor if the carrier implemented” CPNI requirements.<sup>15</sup> A telecommunications carrier that can demonstrate its reasonable, good-faith efforts to implement company procedures that are aimed at complying with CPNI requirements, and that engages in training of its employees regarding those requirements and the Commission’s CPNI rules in general, should not be liable for any unauthorized disclosure of CPNI that may occur. The ICG respectfully submits that this approach to addressing the “safe harbor” should be adopted by the Commission for small carriers. This approach is specifically recognized within the *NPRM*<sup>16</sup> and is reflected in the ICG proposal.<sup>17</sup> The ICG submits that the annual certification requirement of 47 C.F.R. §2009(e) provides a sufficient mechanism by which small telecommunications carriers can certify their implementation of reasonable and good-faith CPNI compliance efforts. Use of this existing rule in order to also demonstrate compliance with the appropriate “safe harbor” in lieu of a

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<sup>13</sup> See proposed 47 C.F.R. §§ 64.2007(c)(3)(i) and (ii)(Section I.B., *supra*).

<sup>14</sup> The ICG notes that its approach also addresses the Commission’s request for comment on “whether carriers should be required to call the customer’s registered phone number for that account to verify the customer’s identity before releasing CPNI to that subscriber.” *NPRM* at ¶22.

<sup>15</sup> See *id.* at ¶26.

<sup>16</sup> *NPRM* at &26.

<sup>17</sup> See proposed 47 C.F.R. § 64.2007(c)(7) (Section I.B., *supra*).

separate filing requirement or other demonstration, is consistent with the Commission's existing recognition that the public interest is served by minimizing the imposition of costly administrative burdens on small telecommunications carriers, particularly when reasonable alternatives exist that achieve the same end such as here.

**C. Should failure to comply with some minimum set of requirements be considered a violation?**

The ICG submits that the FCC's existing processes to enforce its rules are sufficient to address whether failure to comply with some minimum set of requirements should form the basis of a violation.<sup>18</sup> As demonstrated by the actions surrounding the issuance of the *NPRM*, the FCC's processes appear to have uncovered the need for an increased vigilance to ensure that CPNI is not being disclosed improperly. There is no reason to believe that similar processes cannot be successful in the future, and the further efforts to uncover potential requests for unauthorized CPNI disclosures and address it immediately will help ensure that result.

**D. Should carriers report unauthorized access or disclosure of CPNI?**

The Commission asks whether it should adopt a reporting requirement for unauthorized access to or disclosure of CPNI.<sup>19</sup> The ICG believes that such disclosure can occur within the proposed annual certification requirement that the FCC is considering,<sup>20</sup> and that no penalty for delay of such report may be imposed if

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<sup>18</sup> *NPRM* at &26.

<sup>19</sup> *Id.* at &28.

<sup>20</sup> Specifically, the Commission tentatively concluded that carriers will be required to submit an annual compliance certificate to the Commission every year, and with that certification "an

(continued....)

the carrier is within the afore-mentioned “safe harbor.”<sup>21</sup> **E. Should CPNI be encrypted?**

The ICG submits that a proposal that data stored by the carrier be encrypted<sup>22</sup> should not be adopted. As the Commission noted, several commenters have previously stated that “data is already encrypted where appropriate . . . and that encrypting stored records would increase costs and slow legitimate inquiries without offering significant benefits in return.”<sup>23</sup> The ICG agrees. In addition to the potential costs for encryption where none occurs today, the ICG also agrees with commenters who stated that encryption addresses issues are “essentially unrelated to protecting against inappropriate disclosure of CPNI.”<sup>24</sup> The ICG proposal for small telecommunications carriers does not impose unnecessary compliance costs while, at the same time, advancing additional public interest benefits. Accordingly, the ICG respectfully submits that mandatory encryption not be required.

### **III. CONCLUSION**

Should additional FCC action of general applicability be required, the ICG submits that the rule amendment proposed herein would reduce the incidence of unauthorized disclosure of CPNI. As demonstrated herein, that result can be accomplished in a manner that provides for additional customer control over his or

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explanation of any actions taken against data brokers and a summary of all consumer complaints received in the past year concerning the unauthorized release of CPNI.” *Id.* at ¶29.

<sup>21</sup> See proposed 47 C.F.R. § 64.2007(c)(5) (Section I.B, *supra*).

<sup>22</sup> EPIC Petition at 11.

<sup>23</sup> *NPRM* at ¶19 *citing* CTIA Comments at 11, 19; Verizon Wireless Comments at 8; Verizon Comments at 2, 4-5.

<sup>24</sup> *NPRM* at ¶19 *citing* Verizon Comments at 2-3.

her CPNI while avoiding customer confusion, and accomplishes these results in an administratively efficient manner by small telecommunications carriers.

Accordingly, should the Commission deem that additional requirements are necessary to address the unauthorized disclosure of CPNI to data brokers, the ICG respectfully requests that the Commission adopt the proposed Sections 64.2007(c) and (d) suggested herein.

Respectfully submitted,

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